



Federal Communications Commission  
Washington, D.C. 20554

October 13, 2004

DA 04-3256

**DOCKET FILE COPY ORIGINAL**

Christopher D. Imlay, Esq.  
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Re: ET Docket Nos. 03-104, 04-37

Dear Mr. Imlay:

This letter responds to the complaint that you filed October 8, 2004, on behalf of the National Association for Amateur Radio (ARRL)<sup>1</sup> and the Motion for Recusal of Chairman Michael K. Powell, filed October 12, 2004 by ARRL. Because the complaint and the Motion for Recusal are premised on allegations that there has been a violation of the Commission's ex parte rules,<sup>2</sup> these matters were referred to the Office of General Counsel for consideration.

ARRL asserts that Chairman Powell violated 47 C.F.R. § 1.1203 by receiving a presentation concerning ET Docket Nos. 03-104<sup>3</sup> and 04-37,<sup>4</sup> during the "sunshine period" applicable to that proceeding.<sup>5</sup> Specifically, ARRL asserts that on October 7, 2004, the Commission issued a public notice indicating that a report and order concerning these two dockets would be considered at an open agenda meeting on October 14, 2004. ARRL notes that subsequently, on October 12, 2004, Chairman Powell attended a demonstration of a broadband over power line system by the City of Manassas that implicated matters at issue in the two proceedings.

ARRL contends that Chairman Powell's attendance at the demonstration violated 47 C.F.R. § 1.1203, which states in pertinent part:

**§ 1.1203 Sunshine period prohibition.**

(a) With respect to any Commission proceeding, all presentations to decision-makers concerning matters listed on a Sunshine Agenda, whether ex

<sup>1</sup> E-mail from Christopher D. Imlay, General Counsel ARRL to Michael Powell et al. (Oct. 8, 2004).

<sup>2</sup> 47 C.F.R. §§ 1.1200-16.

<sup>3</sup> Carrier Current Systems Including Broadband Over Power Line Systems.

<sup>4</sup> Amendment of Part 15 Regarding New Requirements and Measurement Guidelines for Access Broadband Over Power Line Systems.

<sup>5</sup> Motion at 4 ¶ 5.

parte or not, are prohibited during the period prescribed in paragraph (b) of this section unless:

(1) The presentation is exempt under § 1.1204(a) . . . .


In view of this alleged violation, ARRL maintains that Chairman Powell's further participation in the consideration of the two proceedings would "irrevocably taint" them and that Chairman Powell should therefore recuse himself.

Our review of ARRL's allegations indicates that no violation of the sunshine period prohibition occurred. As the above language indicates, the prohibition does not apply to presentations deemed exempt under 47 C.F.R. § 1.1204(a). Exempt presentations include presentations that are "requested by (or made with the advance approval of) the Commission or staff for the clarification or adduction of evidence, or for resolution of issues . . . ." 47 C.F.R. § 1.1204(a)(10).<sup>6</sup> Any presentations made pursuant to Chairman Powell's voluntary attendance at the demonstration were authorized by him and therefore fall within the exemption.

We also note that unlike the other provisions of the ex parte rules, the sunshine prohibition was intended to establish a "period of repose" in which the Commission was shielded from last-minute interruptions and other external pressures. See Amendment of 47 C.F.R. § 1.1200 et seq., 10 FCC Rcd 3240, 3245 ¶ 39 (1995). Accordingly, the prohibition does not apply where the Commission affirmatively seeks information.

In view of the foregoing, we conclude that no violation of 47 C.F.R. § 1.1203 occurred. We have therefore advised Chairman Powell that there is no basis for him to recuse himself from consideration of ET Docket Nos. 03-104 and 04-37.

Sincerely yours,

  
John A. Rogovin  
General Counsel

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<sup>6</sup> The rule further provides that any new information elicited must be disclosed. 47 C.F.R. § 1.1204(a)(10)(iii).